

REMARKS

Status of the Claims

Claims 33-56 are pending in the application. In this Response, no claims have been amended, added, or cancelled.

Applicants respectfully request the Examiner to reconsider and withdraw the outstanding rejections in view of the following remarks.

Rejection under 35 U.S.C. § 101

Claims 33 and 38-41 have been provisionally rejected under 35 U.S.C. § 101 as allegedly claiming the same invention as that of claims 43-47 of copending application 11/793,303 ("the '303 application). This rejection is respectfully traversed.

Initially, it should be noted that in determining whether a statutory basis for a double patenting rejection exists, the question to be asked is: Is the same invention being claimed twice? 35 U.S.C. 101 prevents two patents from issuing on the same invention. "Same invention" means identical subject matter. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1984); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957). See also M.P.E.P. § 804(II)(A).

While the methods claimed in the presently pending application and in the '303 application are similar, Applicants respectfully submit that the "same invention" is not being claimed in the methods of the two applications. For example, claim 35 in the '303 application, from which claims 43-47 indirectly depend, recites "for sufficient time to give rise to a finally treated sludge wherein the total reduction in the amount of pathogens". The foregoing feature is not recited in claims 33 or 38-41 of the presently pending application.

In view of at least the foregoing, Applicants respectfully submit that the provisional rejection over 35 U.S.C. § 101 should be withdrawn.

Rejections under 35 U.S.C. §§ 102 / 103

Claims 33-56 have been rejected under 35 U.S.C. § 102(f) because Applicants allegedly did not invent the claimed subject matter. Claims 33-56 have been rejected under 35 U.S.C. §§ 102(f)/103(a) because Applicants allegedly did not invent the claimed subject matter. These rejections are respectfully traversed.

Without conceding the propriety of the rejections, Applicants respectfully submit that the following applications were commonly owned at the time of the invention: U.S. Patent Application No. 11/630,604; U.S. Patent Application No. 10/559,969; U.S. Patent Application No. 10/559,970; and U.S. Patent Application No. 11/793,303.

In view of at least the foregoing, Applicants respectfully submit that the rejections should be withdrawn.

Conclusion

Applicants invite the Examiner to contact Applicants' representative at the telephone number listed below if any issues remain in this matter, or if a discussion regarding any portion of the application is desired by the Examiner.


In the event that this paper is not timely filed within the currently set shortened statutory period, Applicants respectfully petition for an appropriate extension of time. The fees for such extension of time may be charged to our Deposit Account No. 02-4800.

In the event that any additional fees are due with this paper, please charge our Deposit Account No. 02-4800.

Respectfully submitted,

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